

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

Jim Barach,	:	CASE NO. 3:19-cv-00008
	:	
Plaintiff,	:	JUDGE:
	:	
v.	:	
	:	
Sinclair Media III, Inc. d/b/a	:	
WCHS-TV and WVAH-TV,	:	
	:	
Defendant.	:	
	:	

DEFENDANT’S NOTICE OF REMOVAL

Now comes Sinclair Media III, Inc. d/b/a WCHS-TV and WVAH-TV (“Sinclair Media”), by and through counsel, and pursuant to 28 U.S.C. §§ 1331, 1332, and 1441, for its Notice of Removal of this action from the Circuit Court of Cabell County, West Virginia to the United States District Court, Southern District of West Virginia, Huntington Division, states:

TIMELINESS OF REMOVAL

1. Plaintiff Jim Barach filed suit in the Circuit Court of Cabell County, West Virginia in Case No. CV 18-C-563, styled *Jim Barach v. Sinclair Media III, Inc. d/b/a WCHS-TV and WVAH-TV*. Plaintiff’s Complaint alleges age discrimination in employment under the federal Age Discrimination in Employment Act of 1967 and under the West Virginia Human Rights Act.

2. Sinclair Media was served with Plaintiff’s Summons and Complaint on December 4, 2018 via the West Virginia Secretary of State as statutory agent. Sinclair Media’s designated agent, CT Corporation, received service of the same on December 7, 2018.

3. Pursuant to 28 U.S.C. § 1446(b), a defendant must file a notice of removal within thirty (30) days from the date that defendant receives formal service of process. *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999). “[W]here service of process is affected on a statutory agent, the time for removal does not begin to run until the defendant has actually received a copy of the process.” *Lilly v. CSX Transp., Inc.*, 186 F. Supp. 2d 672, 675 (S.D.W.Va. 2002).

4. This Notice of Removal is filed within thirty days of actual receipt of the summons and complaint. Therefore, this notice of removal has been filed timely pursuant to 28 U.S.C. § 1446(b).

GROUND FOR REMOVAL

5. The United States District Court for the Southern District of West Virginia has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331, 1332 and 1441, because Plaintiff’s Complaint raises a federal question and because Plaintiff, a West Virginia resident, seeks recovery from Sinclair Media, a Maryland corporation, in excess of \$75,000.

Federal Question Jurisdiction

6. Plaintiff’s Count II alleges age discrimination in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* (Compl. Count II.)

7. Because the Complaint asserts a cause of action arising under the laws of the United States, namely the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*, this Court has jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1331 and the matter is removable pursuant to 28 U.S.C. § 1441(a) (federal question).

Supplemental Jurisdiction

8. In addition to federal question jurisdiction, this Court has supplemental jurisdiction

over Plaintiff's claim that Sinclair Media violated the West Virginia Human Rights Act.

9. Because a common nucleus of operative fact underlies all of Plaintiff's claims such that they are so "so related ... that they form part of the same case or controversy," 28 U.S.C. § 1367(a), this Court has jurisdiction to hear each count of the Complaint. See *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156 (1997); *Shanaghan v. Cahill*, 58 F.3d 106, 109 (4th Cir. 1995); *Sayre v. Potts*, 32 F.Supp.2d 881, 889 (S.D.W.Va. Jan.8, 1999).

Diversity Jurisdiction

10. Furthermore, removal is also appropriate because this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

11. Sinclair Media is and was at all times relevant a Maryland corporation with its principal place of business in Maryland. (Compl. ¶ 2.)

12. Plaintiff is and was at all times relevant a resident of West Virginia. (Compl. ¶ 1.)

13. Plaintiff's Complaint seeks compensatory damages, including lost wages and benefits, emotional distress damages, punitive damages, and attorney fees and costs. (Compl. at 34.)

14. With regard to Plaintiff's claim for lost wages and benefits, one year of Plaintiff's previous salary at Sinclair Media was in excess of \$75,000.

15. Furthermore, attorney fees should be added to the amount in controversy for the purpose of establishing diversity jurisdiction. *Weddington v. Ford Motor Credit Co.*, 59 F. Supp. 2d 578, 585 (S.D.W. Va. 1999) (attorney fees "are required to be added to the value of the matter in controversy").

16. The amount in controversy exceeds the \$75,000 jurisdiction threshold.

17. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 1332.

FILING AND SERVICE OF NOTICE

11. As required by 28 U.S.C. § 1446(a), Sinclair Media is attaching hereto a copy of each process, pleading and order it has received as “Exhibit A.”

12. A copy of this Notice of Removal is being filed in the Circuit Court of Cabell County, West Virginia.

7. Because Sinclair Media is the only named defendant in this action, Sinclair Media does not need the consent of any other party to file this Notice of Removal.

**Sinclair Media III, Inc. d/b/a
WCHS-TV and WVAH-TV,**

By Counsel,

/s/ Elise N. McQuain

Jared M. Tully (WV Bar No. 9444)

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WCHS-TV and WVAH-TV,	:	
	:	
Defendant.	:	
	:	

CERTIFICATE OF SERVICE

I, **ELISE N. MCQUAIN**, do hereby certify that I have electronically filed the foregoing **DEFENDANT'S NOTICE OF REMOVAL** this 3rd day of January, 2019. The following were served with the foregoing via regular mail.

Richard W. Walters
Carl W. Shaffer
Shaffer & Shaffer, PLLC
PO Box 3973
Charleston, WV 25339

/s/ Elise N. McQuain
Elise N. McQuain (WVSB# 12253)